

Food and Nutrition Service, USDA

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nonprofit private child care institution, which (i) maintains children in residence, (ii) operates principally for the care of children and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long term care facilities of chronically ill children; and juvenile detention centers.

(3) With respect to the Commonwealth of Puerto Rico, non-profit child care centers certified as such by the Governor of Puerto Rico.

(o) *School Breakfast Program* means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

(p) *Foodservice personnel* means those individuals responsible for planning, preparing, serving and otherwise operating foodservice programs funded by USDA grants as provided for in the National School Lunch Act and the Child Nutrition Act of 1966.

(q) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(r) *State agency* means the State educational agency.

(s) *State educational agency* means, as the State legislature may determine:

(1) The Chief State School Officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State Department of Education.

§ 227.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for administration of the Program shall be in the State agency, except that FNSRO shall administer the Pro-

gram with respect to nonprofit private schools or institutions in any State where the State agency is prohibited by law from administering the Program in nonprofit private schools or institutions.

§ 227.4 Application and agreement.

After the initial fiscal year of participation each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the provisions of this part. The State agency shall execute Form FNS-74, which shall constitute the written agreement.

(Approved by the Office of Management and Budget under control number 0584-0062)

(44 U.S.C. 3506)

[44 FR 28282, May 15, 1979, as amended at 47 FR 746, Jan. 2, 1982]

§ 227.5 Program funding.

(a) *Total grant.* The total grant to each State agency for each fiscal year for program costs and administrative costs shall consist of an amount equal to 50 cents per child enrolled in schools and institutions within the State during such year, but in no event shall such grant be less than \$50,000: *Provided, however,* That a State's total grant shall be reduced proportionately if the State does not administer the program in nonprofit private schools and institutions. If funds appropriated for a fiscal year are insufficient to pay the amount to which each State is entitled, the amount of such grant shall be ratably reduced to the extent necessary so that the total of the amounts paid to each State does not exceed the amount of appropriated funds. Each State agency which receives funds based on all children enrolled in public and nonprofit private schools and institutions shall make the Program available to those schools and institutions. Enrollment figures shall be the latest available as certified by the Department of Education.

(b) *First fiscal year participation—(1) Assessment and planning grant.* A portion of the total grant shall be made available to each State agency during its first fiscal year of participation as an assessment and planning grant for:

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(i) Employing a State Coordinator, as provided for in § 227.30, and related support personnel costs including fringe benefits and travel expenses, (ii) undertaking a needs assessment in the State, (iii) developing a State Plan for nutrition education and training within the State, and (iv) applying for the State assessment and planning grant.

(2) *Advances for the assessment and planning grant.* FNS shall make advances to any State desiring to participate in the Program, to enable the State to carry out the responsibilities set forth in paragraph (b)(1) of this section. Advances shall be made in two phases, in accordance with the following procedures:

(i) Initially, State agencies may receive an advance up to \$35,000 for the purpose of hiring a State coordinator, as provided for in § 227.30. Application for such an advance shall be made on Form AD-623 when the State agency applies for participation in the Program. The information required for this advance shall be set out in Part III, Budget Information, Section B, Budget Categories. The State agency shall there indicate the funds required for the salary, travel, and fringe benefits of the State Coordinator, and related personnel costs necessary to carry out the duties and responsibilities of the State Coordinator.

(ii) After appointment of the State Coordinator, the State agency may receive an additional advance of up to 50 percent of the total grant to which the State agency is entitled for the first year of participation, after deduction of the advance made for the State Coordinator under § 227.5(b)(2), but not to exceed \$100,000, for the purpose of undertaking a needs assessment in the State, developing a State Plan for nutrition education and training, and applying for the assessment and planning grant. Application for such advance shall be made by amending Part III, Budget Information, of Form AD-623.

(3) *Funds for implementing State plan.*

(i) States receiving advances. Each State agency shall receive the remaining portion of its total grant in order to implement its State plan, which has been approved by FNS, if the State agency has carried out the responsibilities for which advances were received.

With the submission of the State plan each State agency may apply for the funds remaining of its total grant.

(ii) States previously participating. Those States which previously participated may apply for their total grant upon submission of the State Plan.

(c) *Administrative costs.* Each State agency may use up to 15 percent of its total grant for up to 50 percent of its cash expenditures for administrative costs.

(d) *Payment to State agencies.* Approval of the State plan by FNS is a prerequisite to the payment of funds to the State agency. All funds made available for the Program shall be provided through a letter of credit or check, as determined by FNS.

(e) *Unobligated funds.* The State agency will release to FNS any Federal funds made available to it under the Program which are unobligated by September 30 of each fiscal year.

(f) *Funds for existing programs.* State agencies shall maintain their present level of funding for existing nutrition education and training programs. FNS funds for the Program shall augment current nutrition education and training programs and projects. Funds made available by FNS for this Program shall not replace such funds.

[44 FR 28282, May 15, 1979, as amended at 52 FR 8223, Mar. 17, 1987]

Subpart B—State Agency Provisions

§ 227.30 Responsibilities of State agencies.

(a) *General.* Except to the extent that it would be inconsistent with this part, the Program shall be administered in accordance with the applicable provisions of the Departmental regulations 7 CFR part 3015.

(b) *Application.* For the initial fiscal year of participation States shall make application for administration of the Program on Form and are responsible for amending Form AD-623 to request advance funding. In the initial application, in connection with the request for advance funding for the State Coordinator, part IV, Program Narrative, of Form AD-623 shall indicate the State agency's procedures for hiring a State Coordinator and contain a justification